

United States Senate

WASHINGTON, DC 20510

April 13, 2021

Joseph R. Biden
President
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Biden,

We write today to raise concerns with Executive Order 14006, *Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*, and the impact it is having on the United States Marshals Service (USMS) and its prisoner management and prisoner transportation missions.

It is our understanding that, pursuant to the proposed implementation of this order, USMS may not renew contracts for contractor-operated facilities for more than 90 days, and it appears the intent is to prohibit USMS from contracting with contract facility operators indefinitely. We are concerned that prohibiting USMS from utilizing contractor-operated facilities will place additional burdens on the USMS and those in custody while doing little to remedy the underlying issues in the criminal justice system that we all hope to address.

USMS is tasked with the care of more than 64,000 detainees who have either been remanded to custody by a federal judge while they await or are going through their criminal trial, or have been convicted and sentenced by a federal court and are awaiting assignment to a federal prison. USMS does not have the statutory authority to own nor operate its own facilities and therefore completely relies on the Federal Bureau of Prisons (BOP), intergovernmental agreements with State and local governments, and private detention facilities under direct contract to house these detainees.

The use of private detention facilities is essential to providing USMS the flexibility to manage fluctuating populations efficiently, effectively, and equitably. According to a USMS memorandum from February 10, "Losing the use of these private detention facilities would be detrimental to USMS districts that currently rely on private facilities."¹ Currently, private detention facilities are utilized in areas of the country where BOP or State and local facilities either do not exist or do not have adequate bed space to accommodate the needs of the USMS.

Furthermore, USMS makes every effort to house detainees in their custody as close as possible to the federal courthouses where they are being prosecuted. Ending the use of private detention facilities would force USMS to house detainees far from the jurisdiction in which they are on trial, resulting in increased transportation and potential civil rights issues. This would unfairly harm detainees in districts that rely on these facilities by making it harder for detainees to see family, access adequate legal representation, and utilize support services if they are relocated to a facility

¹ USMS Impact to Executive Order on the Use of Private Prisons, U.S. Marshals Service Prisoners Operations Division (February 2021).

far away from their home. Additionally, the increased need to transport detainees over longer distances could result in up to \$150 million or more in additional transportation cost each year.²

Not only are suitable alternatives to private detention facilities in short supply or non-existent in many areas of the country, private facilities are subject to greater standards and oversight. In a report released this February that reviewed the USMS' response to the COVID-19 pandemic, the DOJ Inspector General found that private detention facilities provided more frequent updates with more detailed tracking data and did more to mitigate risk from COVID-19 than government-run facilities.³

Your goal of decreasing our nation's incarcerated population is one with broad support in Congress. However, prohibiting USMS from utilizing private detention facilities does nothing to transform the underlying issues with the criminal justice system that lead so many to be incarcerated. It serves only to make it more costly and difficult for the USMS to fulfill its important mission, and make it harder for detainees to see their family, receive adequate legal representation, and access support systems. We ask that you reconsider this executive action's impact on the USMS to ensure that they can still effectively execute their mission.

Sincerely,



Jeanne Shaheen
United States Senator



Jerry Moran
United States Senator

² USMS Impact to Executive Order on the Use of Private Prisons, U.S. Marshals Service Prisoners Operations Division (March 2021).

³ Review of the United States Marshals Service's Response to the COVID-19 Pandemic, Audit Division 21-034 (February 2021).